

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN JAVIER CHAMUL,

Defendant.

8:09CR452

MEMORANDUM AND ORDER

This matter is before the court on defendant's motion to vacate pursuant to [28 U.S.C. § 2255](#). [Filing No. 84](#). Under the Rules Governing Section 2255 Proceedings for the United States District Courts ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See [28 U.S.C. § 2255](#), Rule 4(b). "The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order." *Id.*

Defendant entered a guilty plea for a violation of [18 U.S.C. § 922\(g\)\(1\)](#) and [18 U.S.C. § 924\(e\)](#), felon in possession of firearm, which was accepted by the court on October 13, 2010. [Filing No. 45](#). Judgment in this case was handed down on October 13, 2010 and entered on the docket on October 21, 2010 and the defendant was sentenced to a term of 188 months and 5 years supervised release. [Filing No. 48](#). This sentence was based upon an offense level of 34 which was determined in part due to the criminal history of the defendant. Prior to his conviction on October 13, 2010, the defendant had three previous felony convictions for robbery, assault by a confined person, and second degree assault. [Filing No. 46](#) (sealed). Pursuant to [18 U.S.C.](#)

[§ 924\(e\)](#), the court determined that the convictions were applicable to qualify the defendant as a career criminal.

Defendant filed a previous motion pursuant to § 2255, [Filing No. 51](#), which this court denied, [Filing No. 55](#), as out of time and without merit. The court also denied his motion for reconsideration. [Filing No. 57](#) and [Filing No. 58](#). Defendant filed an appeal, [Filing No. 59](#), and the Eighth Circuit denied the same. Filing Nos. 65 through 70. Defendant filed a motion for reconsideration, [Filing No. 75](#), which this court denied, [Filing No. 76](#). Defendant filed a motion to reduce sentence, [Filing No. 71](#), which this court denied, [Filing No. 72](#). Defendant appealed that ruling, [Filing No. 73](#), and again, the Eighth Circuit denied the application for a certificate of appealability. See Filing Nos. 80-83.

Defendant again files a motion pursuant to § 2255. [Filing No. 84](#). For the reasons set forth in [Filing No. 55](#), this court denies this motion as untimely, successive and without merit. It plainly appears that this defendant is not entitled to any relief.

THEREFORE, IT IS ORDERED THAT:

1. Defendant's motion pursuant to 28 U.S.C. § 2255, [Filing No. 84](#), is dismissed.
2. A separate judgment will be entered in accordance with this memorandum and order.

Dated this 22nd day of August, 2017.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge